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ABSTRACT

Questions that were the basis for discussion in working parties of a workshop on state postsecondary education institutional authorization and oversight are presented, and comments and strawman answers to stimulate consideration of the questions are included. The questions are as follows: (1) What should be the relationship of state licensing agencies and their personnel to other state agencies and national organizations or their personnel? (2) How should state licensing and approval agencies communicate with one another? (3) What strategies are available to states to improve licensing statutes and regulations? (4) How should states improve the administration of licensing regulations? (5) How should one state recognize the institutional licensing of another? (6) How can the U.S. Office of Education assist states in discharging the state licensing of postsecondary institutions? (7) What should be the relationship of state licensing to programs on military bases? (8) What should be the minimum consumer protection standards enforced through state licensing? (9) What should be the relationship of state licensing to state Veterans' Administration course approving agencies? (10) What should be the relationship of state licensing to institutional eligibility for federal funding? (11) What should be the relationship of state licensing to public institutions? (12) How should institutional accreditation be recognized in state licensing laws, regulations, and administration? (12) How can the states improve their uses of nongovernments/accreditation and cooperation between appropriate state agencies and accrediting bodies? (13) How should states license or otherwise supervise extension activities of an institution operating outside its home state? (SW)

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SOME SALIENT QUESTIONS
FOR CONSIDERATION BY WORKING PARTIES

State Postsecondary Education Institutional Authorization and Oversight:
A National Report and Inservice Education Program

Colorado Springs, Colorado
July 1978

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SHEEO

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SOME SALIENT QUESTIONS

FOR CONSIDERATION BY WORKING PARTIES

Attached are questions which are the basis for discussions in "working parties" to which each attendee will be assigned at the workshop in Colorado Springs, July 11-14, 1978.

You will note that each question has a comment and "strawman answers" to stimulate consideration of the question. Strawman answers may or may not be possible answers.

STATE POSTSECONDARY EDUCATION INSTITUTIONAL AUTHORIZATION AND OVERSIGHT:

A NATIONAL REPORT AND INSERVICE EDUCATION PROGRAM

Cosponsors:

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Colorado Springs, Colorado
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I-1. WHAT SHOULD BE THE RELATIONSHIP OF STATE LICENSING AGENCIES AND THEIR PERSONNEL TO OTHER STATE AGENCIES AND NATIONAL ORGANIZATIONS OF THEIR PERSONNEL (E.G., ATTORNEYS GENERAL, LEGISLATORS, GOVERNORS)?

COMMENT: The AIR report notes that many consumer abuse problems in education have engaged the attention of those concerned with consumer fraud generally. The report also recommends that state licensing officials be more concerned with good public relations and with harmonious relationships with other state agencies.

STRAWMAN ANSWERS:

A. The normal interagency communication procedures are generally adequate now, and any plan to modify them would be more disruptive than productive.

B. The purposes to be served by state licensing of educational institutions is of such pressing public importance that each governor should be urged to designate a member of his personal staff to monitor activities, thus insuring the state licensing agency immediate access to the chief executive and, through him, to other agencies.

C. Every state licensing agency should prepare for public distribution at least annually a report describing in simple and understandable terms the work of the agency, its recent successes, and the problems it faces. This report should also outline what other state agencies might do to assist the work of state licensing.

D. A staff member in each state licensing agency should be assigned to monitor the activities of external groups and other agencies, and to initiate communication with them whenever this seems likely to promote mutual interests.

E. State licensing agencies should promote regular meetings between themselves and the institutions affected by licensing, to encourage understanding and support of the procedures, as well as to encourage the help of these institutions in promoting the welfare of the agency.

I-2. HOW SHOULD STATE LICENSING AND APPROVAL AGENCIES COMMUNICATE WITH ONE ANOTHER?

COMMENT: Experience within one state may be useful to another. This is true not only for general procedures and drafting of laws and regulations, but also for knowledge of the quality of institutions that operate across state lines. This question explores how such information might be transmitted.

STRAWMAN ANSWERS:

A. To meet legal requirements (such as avoiding double jeopardy), each state must act on the basis of only information obtained by it from an institution. Transmission of information from one state to another to be used in licensing or regulatory decisions is filled with legal problems, especially since such information may be out of date, or not pertain to institutional operations in another state.

B. Information should be transmitted only informally, and utilized by the receiving state at most in identifying problem institutions or programs that should be subjected to careful examination.

C. States should work toward the establishment of a "state liaison agency center and clearinghouse," as recommended in the AIR study. This clearinghouse should disseminate to all states information about public actions of state licensing agencies, but should not receive information about actions in progress or under consideration. (See AIR report for further details.)

D. The cost of operating such a clearinghouse would be excessive for the benefits. Instead, every state should automatically send to all the others its public action respecting educational institutions.

E. The amount of information available within one state that would be pertinent to another is very small because of differences among states. Any procedure to share this information would not be cost effective. The whole issue should be dropped.

II-1. WHAT STRATEGIES ARE AVAILABLE TO STATES TO IMPROVE LICENSING STATUTES AND REGULATIONS?

COMMENT: The AIR report shows that states' licensing and regulations vary widely; this strongly suggests that improvement is possible in many states. This question explores how such improvement might be encouraged.

STRAWMAN ANSWERS:

A. Despite the appearance of unnecessary variation, state licensing statutes and regulations have been developed as needed over the years. It is undesirable to interfere in this natural political process, other than for individual states to make whatever changes seem suitable to each.

B. The statutes and regulations of the states having the most detailed requirements should be used to develop new models for adoption by all states.

C. "He governs best who governs least" is an excellent motto for the regulation of education, since it avoids imposing state concepts on the educational program. There is no evidence that education is better in "strong licensing" states than in states having little or no licensing. Further, real abuses can and should be dealt with through general laws on fraud, false advertising, misrepresentation, and the like, and not by special education laws. The best way to improve regulations limiting educational institutions would be to repeal them all, save the money for administering them, and return to a free competitive market in education, with quality control exercised voluntarily through accreditation. The state's concern for public protection is fully served through licensing of individuals who practice within the state (physicians, dentists, lawyers, etc.).

D. The state should establish a continuing "task force" to prepare annually a set of "model statutes and regulations," making these available so that all states can consider adoption or modification as conditions change.

E. There should be a central group of authorities on licensing and regulations of education who are available to states wishing to improve their laws.

F. A central organization (such as ECS) should undertake a program to improve state laws and regulations, drawing into the discussion not only education agency personnel, but also governors, legislators, and other public figures.

II-2. HOW SHOULD STATES IMPROVE THE ADMINISTRATION OF LICENSING REGULATIONS?

COMMENT: The AIR report documents that the administrative strength utilized for licensing varies widely among the states. This question explores how the administration of laws and regulations (whatever their character) might be improved.

STRAWMAN ANSWERS:

A. Administration depends so heavily on local factors of financial support, locus of administration within a state, civil service requirements, etc., that it is almost impossible to provide meaningful assistance outside the context of a single state. Within a state the local people know best how to get things done.

B. Regular meetings of state personnel through their own professional organizations adequately provide for improvement of individual actions and for suggested organizational improvement.

C. There is need for an in-service training program for state regulatory agency personnel. This should be provided through external funding (possibly including federal grants), as well as through state support.

D. There is need for a body of literature describing accepted administrative practices. Support should be sought to develop this literature, possibly including the establishment of a journal devoted to the subject.

E. The administration of educational regulations has become a specialized task. Formal programs of study should be developed and offered, leading to certificates upon successful completion. States should appoint to principal administrative positions only persons holding such specialized certification. Persons already in office should have a reasonable time to achieve such certification, but should be dropped if they fail to do this.

F. States could contract with or partially support accrediting agencies to permit the use of accreditation visits as a part of the licensing procedures.

II-3. HOW SHOULD ONE STATE RECOGNIZE THE INSTITUTIONAL LICENSING OF ANOTHER?

COMMENT: Reciprocity among states is well established in many fields: licensing of professional practitioners, for example. Such reciprocity avoids unnecessary and wasteful duplication of licensing examination procedures and encourages free movement of people and activities among the states, while preserving the interest of the public in high quality services. Recently post-secondary institutions have begun to establish "extension centers" or "off-campus centers," sometimes in states outside the home state of the institution. This question explores how a state in which an extension center is located ("off-campus" state) should regard the licensing of the institution's home state.

STRAWMAN ANSWERS:

A. No reciprocity should be recognized: any educational activity within a state should stand on its own merits and obtain a state license.

B. States should examine the licensing requirements of other states and provide reciprocity when the home state has licensing requirements as high or higher than the off-campus state.

C. State should provide reciprocity in licensing off-campus centers only if the institution has off-campus centers within its home state that are covered by the home-state license.

D. State should provide reciprocity in licensing off-campus centers to any institution located in a state with licensing requirements, but not to those in states without licensing.

E. State should automatically provide a license to operate an off-campus center if the institution demonstrates that it is operating legally in its home state, regardless of the home state requirements.

F. State licensing requirements vary so widely that licensing in one state should not be related to licensing in another; rather, a state should extend reciprocity on the basis of the accreditation of the institution.

III-1. HOW CAN THE U.S. OFFICE OF EDUCATION ASSIST STATES IN DISCHARGING THE STATE LICENSING OF POSTSECONDARY INSTITUTIONS?

COMMENT: The federal government and the states form two parts of the "triad." This question seeks to explore how these parts may interact in the federal-to-state direction.

STRAWMAN ANSWERS:

A. USOE should provide no assistance, because licensing is exclusively a state function that should (and must) be carried out by the states.

B. USOE should provide states with written materials describing accepted procedures for carrying out licensing.

C. USOE should provide contacts with private organizations to provide training and other assistance to the states.

D. USOE should establish and operate the "state licensing agency clearing house" as recommended in the AIR report.

E. USOE should make grants directly to the states to improve state licensing and monitoring procedures.

F. USOE should provide full or partial reimbursement to states for inspecting institutions to assure that they meet state standards, and when appropriate, federal program eligibility standards, on a continuing basis.

III-2. WHAT SHOULD BE THE RELATIONSHIP OF STATE LICENSING TO PROGRAMS ON MILITARY BASES?

COMMENT: Because military bases are federal enclaves, they lie "outside" the state in which they are located. However, many bases now provide postsecondary education, both directly by military organizations and indirectly by contracts with colleges that establish off-campus centers on the base. Some of these college centers enroll civilians, under a policy that allows a certain percentage of "militarily-related" civilians to enroll.

STRAWMAN ANSWERS:

A. Since military bases are legally "outside" state boundaries, states have neither obligation nor responsibility to monitor programs conducted on them. Any credits or degrees earned through military base programs should be treated like any other credits or degrees awarded by out-of-state institutions.

B. States should take no action respecting military base programs offered for military personnel, but should take action to prohibit recognition of credits and degrees earned in such programs by civilian personnel (e.g., the use of such credits for teacher certification or teacher salary increment).

C. States should work with military authorities to insure that those military base programs enrolling civilians meet state licensing requirements.

D. States should express concern for the quality of military base programs, but, recognizing the legal problems, should confine their actions to encouraging military bases to offer only programs provided by accredited institutions.

E. Despite the legalities states should work with military authorities to insure that all military base programs meet state licensing requirements.

III-5. WHAT SHOULD BE THE MINIMUM CONSUMER PROTECTION STANDARDS ENFORCED THROUGH STATE LICENSING?

COMMENT: The AIR report shows that the states have widely differing licensing statutes and regulations. This question explores whether there is a minimum level of consumer protection that should be present in the laws and regulations of all states. In a sense, it seeks to encourage identification of a minimum content for "model" laws and regulations.

STRAWMAN ANSWERS:

A. Minimum standards must be set individually by the several states because conditions and requirements (including other state-consumer-protection laws) vary so widely that no common pattern will be useful.

B. A common pattern is essential, particularly because of the increase of educational offerings by out-of-state institutions. However, the question is complex and should be addressed by the formation of a special task force to work on it.

C. The question can only be addressed by statute or regulation at the federal level. The jurisdiction of the Federal Trade Commission (or some other agency) should be extended.

D. The minimum standards are easily set forth: (a) full public disclosure of program, faculty, facilities, and operating policies; (b) demonstration of institutional financial strength to complete any program offered (including the possibility of bonding); (c) regular re-filing to make certain the standards are continuing to be met.

E. The minimum standards should include, in addition to the items mentioned in answer D, a judgment of educational quality, made by setting operating standards such as number of books available to students through libraries, a maximum student/teacher ratio, minimum number of contact hours for each credit hour awarded, etc.

F. The minimum standards should include, in addition to the item mentioned in answer D, a judgment of educational quality, made by setting outcome standards, such as requiring that the institution demonstrate that the educational achievement of its students is at least as great as that of the students of some acceptable institution (for example, the state university).

continuation of question number III-3.

G. The minimum standards should be tied to research already accomplished on "potentially abusive practices" (such as the AIR study), with each institution required to demonstrate that its practices place it at least at the median of institutions with respect to measures of such practices.

H. Consumer protection should be adequately covered by statutes of general applicability, and no special consumer protection regulations for educational institutions are desirable or needed.

III-4. WHAT SHOULD BE THE RELATIONSHIP OF STATE LICENSING TO STATE VETERANS' ADMINISTRATION COURSE APPROVING AGENCIES?

COMMENT: Each state provides for individual course approvals to provide eligibility for students receiving VA benefits. These course approvals are provided by a state agency with financial support from the VA.

STRAWMAN ANSWERS:

A. State licensing and VA course approval are quite separate activities, with significantly different purposes. It is inappropriate for any connection to be present between them, other than the obvious one that VA approved courses must be offered by properly-licensed institutions.

B. Since occasionally either the licensing agency or the VA course approval agency receives important information about an institution, the two agencies should have a good familiarity with one another that will facilitate informal communications when helpful; but no formal connection is necessary.

C. The requirements imposed by the VA can be used as important indicators of institutional quality. The licensing agency and the VA approval agency need to be in constant communication, with information received by one communicated to the other for possible action.

D. The interaction between state licensing and VA course approval is so intimate that these activities should be placed within the same state agency, and, so far as possible, carried out by the same personnel.

E. The states should look to the accrediting agencies to provide information on state actions, since these agencies are directly concerned with licensing as a precondition to accreditation. The accrediting agencies should be expected (and perhaps assisted) to collect such information and transmit it to states upon request--certainly for accredited institutions, and possibly for others. In effect, the accrediting agencies are an existing mechanism that could be used as an information clearinghouse without additional cost to the states.

III-5 WHAT SHOULD BE THE RELATIONSHIP OF STATE LICENSING TO INSTITUTIONAL ELIGIBILITY FOR FEDERAL FUNDING?

COMMENT: The principal federal activity in postsecondary education is the provision of funds. In general, these are restricted for use in or by institutions judged "eligible" for federal funding. This question explores how state licensing and eligibility for federal funding should be related.

STRAWMAN ANSWERS:

A. The purpose of state licensing has no relationship to the purposes of federal funding programs. Consequently, a state should feel no responsibility for associating state licensing with federal eligibility. If the federal government wishes to use the public information that an institution is licensed, well and good; but that is exclusively a federal decision, and whether state licensing fills federal needs or not should not concern the states.

B. State licensing defines a minimum acceptable level of institutional activity. Institutional accreditation starts at that minimum level and seeks to raise institutions higher. The federal government long ago elected to utilize accreditation as the primary criterion for federal eligibility. This historic pattern should continue; thus state licensing should be related to federal eligibility only through licensing's being required for accreditation.

C. Because state licensing is a requirement for an institution to operate legally within a state, federal eligibility should be restricted to only state-licensed institutions. However, the states must maintain full authority to define their requirements, and federal concern should be limited merely to determining that an institution meets state legal requirements before federal eligibility is granted.

D. Federal eligibility has a long history of being concerned with restricting the use of federal funds to institutions which are legally authorized to operate. Since this status is acquired by state licensure procedures, the states should work with the federal government to define a uniform set of minimum licensing standards. The federal government would use these standards for recognizing state licensing agencies for federal eligibility purposes.

E. Because accreditation is a voluntary activity, it does not deal with all institutions within a state. Thus, to enlarge the ability of institutions to obtain federal eligibility, state licensing should be an alternative to accreditation for this purpose. This means that USOE should undertake to establish recognition criteria for state licensing (similar to those already in use of accrediting agencies), and to recognize those state licensing agencies which meet the criteria as providing licensing that can serve to provide eligibility for federal funding.

IV-1. WHAT SHOULD BE THE RELATIONSHIP OF STATE LICENSING TO PUBLIC INSTITUTIONS?

COMMENT: Each state not only can regulate private institutions (both for-profit and not-for-profit,, but also is itself an operator of its public institutions. The question explores the possible relationship of these two aspects of state interest in postsecondary education: regulator and provider.

STRAWMAN ANSWERS:

A. The regulations applied to private instututions should also be applied to public institutions, since both provide essentially the same services to the public and should therefore be treated equally in the regulatory process, with both meeting regulations established by an independent regulatory authority.

B. It is appropriate that private and public institutions meet the same regulations established for public protection. This can be best accomplished by having the agency responsible for the operation of public institutions also be the regulatory authority for private institutions.

C. Public institutions are already monitored by the public, through governing boards, coordinating boards, and the oversight of executive and legislative branches. Public institutions should not be subject to any regulatory control other than that provided by these public agents.

D. Regardless of how a state elects to treat its own institutions, it should regard off-campus activities of a public institution in another state as if they were operations of a private institution and require the same licensing of such activities.

IV-2. HOW SHOULD INSTITUTIONAL ACCREDITATION BE RECOGNIZED IN STATE LICENSING LAWS, REGULATIONS, AND ADMINISTRATION? HOW CAN THE STATES IMPROVE THEIR USES OF NONGOVERNMENTS/ACCREDITATION AND COOPERATION BETWEEN APPROPRIATE STATE AGENCIES AND ACCREDITING BODIES?

COMMENT: Accredited institutions are currently afforded advantages over non-accredited in several states. Advantages include (a) automatic licensing (perhaps subject to filing of catalogs or other documents), (b) exemption from licensing procedures, (c) utilization of information gathered by accrediting bodies as the basis for the licensing decision. In some states these advantages are incorporated in statutes; in others in regulations; in others through ad hoc use of accreditation by state administrators.

STRAWMAN ANSWERS:

A. Accredited institutions should be treated no differently from any others in the state licensing process.

B. State licensing and accreditation are quite different things, although using many of the same administrative procedures (e.g., on-site visits, written reports, use of professional judgment in evaluation, etc.) It is appropriate for a state to use the data and results of an accreditation examination as a basis for a licensing decision, if an institution wishes to submit these for consideration. However, the state should reserve the right to make its own independent examination if it wishes (either in place of, or as supplement to, the accreditation data and results) and base its licensing decision on its own examination.

C. Accredited institutions should be automatically licensed only if the accreditation examination included on-site visits to every location within the state at which the institution operates. A new site should be included in the license only if the accrediting organization provides a site visit to it within six months of its opening.

D. Since accredited institutions have been subject to an examination at least as searching as any the state might provide, the fact of accreditation should be accepted by a state as fully satisfying the requirement for licensure, and accredited institutions should be automatically licensed. Such a policy should apply not only to a main campus, but also to all off-campus centers of an accredited institution.

E. State licensing agencies and accrediting bodies should seek cooperative procedures (e.g., common institutional reports, joint institutional visits) through agreements applying to all institutions in a state that wish accreditation. Such procedures would greatly reduce the burden upon institutions and provide better information for state licensing decisions.

IV-3. HOW SHOULD STATES LICENSE OR OTHERWISE SUPERVISE EXTENSION ACTIVITES OF AN INSTITUTION OPERATING OUTSIDE ITS HOME STATE?

COMMENT: Off-campus centers and other extension activities outside an institution's home state have presented a number of problems to states. This question explores how supervision might be effected.

STRAWMAN ANSWERS:

A. Each state should establish special licensing requirements for extension activities of institutions and apply them uniformly to both out-of-state and in-state institutions. Not only is this procedure equitable, but is also permits a state to relate its licensing activities to its planning activities by controlling the growth of off-campus activities.

B. Each state should regard as part of its licensing responsibility any off-campus centers (in-state or out-of-state) of an instituiton it licenses. Therefore, licensing of off-campus centers should be accomplished as a part of interstate licensing reciprocity.

C. The states should cooperate with the accrediting agencies, providing licensing to those off-campus centers that are included within an institution's accreditation. An institution lacking accreditation should not be permitted to operate off-campus centers outside its home state.

D. Since most off-campus centers provide only selected programs, a center cannot be judged as a whole institution. Licensing off-campus centers would therefore place states in the position of judging program quality. This is a dangerous area for licensing to enter without extensive support, including professional personnel, which is highly unlikely to be obtained. Therefore, any special licensing of off-campus centers should be confined to at most simple consumer protection concerns (such as tuition refund policy and disclosure of information).

E. It should be recognized that problems with off-campus centers have been greatly magnified out of all proportion to their importance, and has been stimulated largely by those who want to "protect their turf" by excluding entrepreneurs with new ideas. The number of students enrolled is small, and for many of them the programs offered are of acceptable quality. Further, these off-campus centers have enlarged the opportunity for education available to the public. If there are difficulties, these can be best addressed by stimulating the in-state institutions to provide such opportunities themselves; after all, why would anyone elect to spend $1000 for a degree from an unknown small college if the same degree is available at $500 from the state university? The real cure for any problems of off-campus centers is to have the in-state institutions wake up and start providing the educational opportunities needed within the state. If they can't put any carpetbaggers out of business they don't deserve state support.